Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Infrastructure Sharing Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-237
	)	
	)	
	)	

REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Pursuant to the Public Notice released November 22, 1996, in the above docket ("Infrastructure NPRM"), the Association for Local Telecommunications Services ("ALTS") hereby replies to comments on the Commission's proposed implementation of Section 259 of the Telecommunications Act of 1996.

I. THERE ARE NO "NON-COMPETING CARRIERS" UNDER THE TELECOMMUNICATIONS ACT OF 1996.

Although the Telecommunications Act of 1996 became law almost a year ago, it is apparent from the initial comments in this proceeding that many telecommunications providers are having a hard time shaking off their old monopoly mindsets. Time and again in the initial comments various parties make references to "non-competing carriers" as though such a status were either self-evident, or else created by Section 259.[1] USTA leads the way by trotting out the

[1] See, e.g., OPASTCO at i: "Section 259 is intended to maintain and foster non-competing LEC arrangements that benefit the public by enabling carriers lacking economies of scope and scale to provide services or access;" Sprint at 3: sharing arrangements (continued...)

oldest disguise of all for anticompetitive activity, "universal service":

> "Section 251, as a competitive provision, requires incumbent LECs to provide unbundled network elements to carriers that plan to provide service in the incumbent LEC's service area. By contrast, Section 259, as a universal service measure, is designed to make network infrastructure capabilities available to universal service providers that lack economies of scale and scope only where the QLEC plans not to compete" (emphasis in original; USTA at 6).

ALTS strongly urges that even if the Commission possessed USTA's omniscient ability to discern which carriers "plan not to compete," it should refuse to recognize any such category for two compelling reasons.

First, nothing in the language of Section 259 mandates either bilateral agreements not to compete, or unilateral declarations of an intent not to compete. Rather, this section simply requires that any particular facilities acquired by a qualifying company pursuant

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[1](...continued)
under Section 259 only available "where the requesting qualifying carrier is not competing with the ILEC;" NYNEX at i: Section 259 is available "where the qualifying carrier is fulfilling universal service obligations and does not compete with the providing carrier;" Pacific at 4: " ... a non-competing qualifying carrier may elect infrastructure sharing under either Section 259 or 251;" GTE at 2: "LECs entering into infrastructure sharing arrangements are not competitors ...;" SWB at 1: " ... infrastructure sharing agreements are to be a matter of negotiation between non-competing 'qualifying carriers;'" Ameritech at ii: USTA proposal accommodates "the divergent interests of both incumbent local exchange carriers as well as non-competing qualifying local carriers"; emphasis supplied.

to this provision not be used in the provisioning incumbent's territory. Section 259(b)(6). The statute as a whole clearly permits a qualifying carrier to compete in a provisioning incumbent's territory -- such as by acquiring unbundled network elements or reselling services under Section 251, or by building new facilities. The only restriction imposed by Section 259 is that qualifying carriers cannot employ Section 259 facilities in their competitive efforts.[2] Thus, there may be facilities which cannot be used competitively, but there are no carriers which are prohibited from competing.[3]

Second, the legislative history of Section 259 expressly states that: "The bill does not grant immunity from the antitrust laws for activities undertaken pursuant to this section" (SEN. REP. NO. 104-230 at 34). Thus, any attempt by the Commission to try to issue implicit antitrust immunity to so-called "non-competing carriers"

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[2] NYNEX also tries to argue that Congress did not intend for agreements between adjacent LECs to be encompassed by Sections 251 and 252 (NYNEX Comments at 7-9). However, NYNEX fails to mention the Commission has already rejected these same arguments in its Interconnection Order, CC Docket No. 96-98, ¶ 162 n. 310, ¶¶ 165-171. Inasmuch as NYNEX did not choose to challenge this finding in its brief filed November 18, 1996, in the Eighth Circuit's review proceeding of the Interconnection Order (cf. OPASTCO's Comments at n. 2)), NYNEX is not able to challenge that finding here -- or to pretend it does not exist.

[3] See US WEST Comments at 6: " ... any infrastructure sharing agreement may not involve a market allocation agreement between the incumbent LEC and the qualifying carrier. The Commission does not have the authority under the infrastructure sharing Section of the Act to permit carriers to allocate markets."

would be doomed to failure.

Chairman Hundt recently underscored the overarching role of competition in the Telecommunications Act of 1996 (December 24th release concerning the Commission's agenda for 1997, at 2):

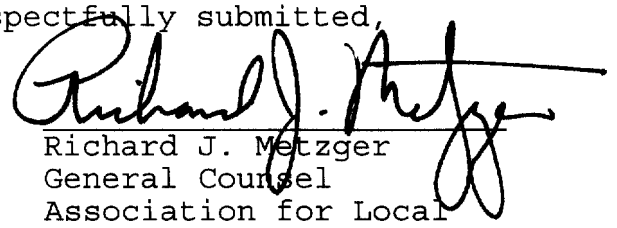
> "Congress wants competition, not co-competition. We want a full competitive war, not a standoff in which incumbent companies warily eye each other, but never really enter each other's market ...
>
> "Detente is not what the Telecommunications Act of 1996 was supposed to be about." (Emphasis supplied.)

The Chairman's remarks are particularly appropriate here, where the "detente" sought by USTA for qualifying carriers is completely unnecessary in order to carry out Section 259. As ALTS noted in its initial comments, Section 259 can be implemented without requiring (or permitting) qualifying carriers and provisioning incumbents to agree not to compete, a permission the Commission clearly has no authority to grant. As NCTA suggests in its comments (at 4), qualifying carriers should be permitted to use Section 259 services and facilities for any purpose, provided only that when such services are utilized outside the qualifying carrier's universal service territory, the provisioning incumbent must be compensated for such use pursuant to the pricing standards of Section 251.

CONCLUSION

For the foregoing reasons, ALTS requests that the Commission implement Section 259 consistent with the pro-competitive intent of Congress reflected throughout the 1996 Act.

Respectfully submitted,

By: 

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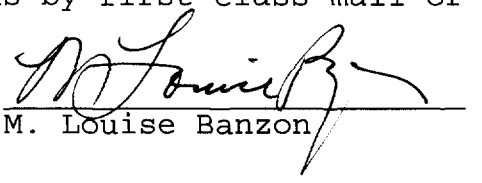
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Comments by the Association for Local Telecommunications Services was served January 3, 1997, on the following persons by first-class mail or hand service, as indicated.



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